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United Arab Emirates

Bounced Security Cheques as Evidence in Criminal Cases

Guiding Principle

In the UAE security cheques are a popular securing device. According to its definition a security cheque is a postdated cheque to secure payments that will arise in the future. In many cases payment is dependent on the fulfillment of a condition. The majority of security cheques is issued in order to secure the repayment of a debt, e.g. a real estate or a personal loan.

I. Criminal and Civil Liability

It is important to make the distinction of criminal and civil liability. Whereas civil liability provides financial compensation to the injured party and is amendable to waiver and compromises, the penalty which results from criminal liability is prescribed by law and not negotiable.

Art. 401 of the UAE Penal Code make cheque fraud a punishable offence which results to confinement or fine. The criteria for the assumption of fraud are the issuance of a cheque which does not have a provision, which could be withdrawn or which has a provision less than the amount of the cheque, with bad faith. This will be punished in the same manner a person who, in bad faith, after issuing the cheque withdraws all or part of the provision and renders the balance insufficient to settle the amount of the cheque, orders the drawer not to pay the value of the cheque or issues a cheque in such a manner as to prevent it from being paid.

II. Function of Cheques in Legal Matters

In legal matters cheques are used as proof for certain circumstances. For the courts in the UAE a cheque is a commercial paper which contains an order of the issuer towards his bank to pay the beneficiary a specific sum of money on a specific date.

What kinds of facts are actually able to be proven with the presentation of a cheque depends on the applicable field of law.

1. Civil Cases

Within civil cases a cheque can be used to prove the fact that the debtor owes money, especially loan and interest.

2. Criminal Cases

According to Art. 401 of the UAE Penal Code the issuance of a cheque while knowing the funds are insufficient to cover it on the due date, is a criminal offence. In conjunction with these circumstances the issuance of a security cheque can often result in problems. An undated or postdated security cheque is able to fulfill Art. 401 of the UAE Penal Code easily, as the issuer does not have influence on the moment the cheque is cashed.

Therefore it is absolutely decisive whether bad faith can be proven to the issuer.

The Criminal Courts in the UAE and its Supreme Court have determined that the issuer's bad faith is established when he knows that there are insufficient funds. As a result the Supreme Court has stated that the criminal offence of Art. 401 of the UAE Penal Code is committed by

issuing a bounced cheque. For the Court, criminal liability cannot be avoided by claiming that the cheque was supposed to be a security instrument and that the beneficiary should have known about the insufficiency. To put it in another way, the presentation of a cheque linked to the fact that it bounced is considered to be a proof for bad faith of the issuer.

Given the fact that it does not make a lot of sense to impose a fine on the debtor, his freedom of movement will be restricted in the majority of cases. This can be achieved by either confinement or confiscation of the passport during the investigations.

a) UAE Citizens

Considering the results of this established law practice, a presidential decree was passed on 25th October 2012. The decree affected cases of bounced cheques filed by banks and financial companies against Emirati citizens. Accordingly, UAE courts stopped accepting cheques which were submitted by banks or financial companies as a criminal tool in cases against Emiratis.

Moreover cases against Emiratis were dismissed after an application. The decree pertains to cases under investigation as well as cases where verdicts already have been issued as it either calls for suspension or grants a search suspension document to avoid any action against the affected persons. In consequence many UAE citizens were freed from custody.

Nevertheless it is important to point out the independence of criminal and civil liability. The decree does not undermine the rights of banks and financial

companies regarding their civil claims.

It is also very important to pay attention to the fact that the decree only deals with cheques favoring banks and financial companies. Therefore it does not apply in cases in which cheques are issued between individuals, where the liability continues to be a criminal one.

b) Citizens from other Countries

In January 2013 rumors circulated that expatriates in the UAE will not be exempt from the impact of the presidential decree issued in October 2012. The media reported that UAE courts have stopped accepting cheques submitted by banks and financial companies as criminal tools in cases against expatriates, too. The newspapers indirectly quoted government workers saying that banks were told that federal courts would no longer accept cheques presented by them by expatriates against a loan.

The government worker gave the President's directives to achieve justice for all residents including Emiratis and expatriates as a reason. Moreover a judge was quoted saying that the Federal Public Prosecutors have also released expatriates from detention.

Moreover banking officials confirmed that cheques would no longer be considered criminal tools but only as a proof for the fact that the banks are owed money by a debtor.

However these media reports do not comply with the truth. No evidence which could support this statement can be found. The presidential decree expressively only affects UAE citizens. There is no clue that it is supposed to be

applied mutatis mutandis to persons who are not citizens of the UAE.

The media also became aware of this on 6th January 2013, the first article appeared stating that expatriates will not be exempt from criminal charges for bouncing cheques.

This can be explained as follows: In cases of Emiratis, their loans will be settled in accordance with specific settlement mechanisms, including a deduction of 25 % from their monthly salaries, with undertakings not to borrow again until the loan is settled.

Only Emiratis whose files are being handled by the Higher Committee for Debt Settlement Fund for Nationals can be beneficiaries of the decree. The Higher Committee stated that it will only settle bad debts for Emirati citizens and not foreigners living in the UAE. Furthermore it was made clear that the mechanisms set by the fund will apply only to UAE citizens, and not others, and this includes the President's directives to decriminalize security cheques presented by UAE citizens to banks and financial companies.

This fund may settle the debts of Emiratis whether detained or convicted, and are still settling their debts according to payment schedules set by courts.

III. Conclusion

To put it in a nutshell the effects of the Presidential Decree from October 2012 only made a difference for Emiratis who are seriously trying to settle their debts. Expatriates do not profit from the new regulations except maybe for a few lucky ones.

In cases against Expatriates there is no

guarantee that a UAE court will reject a bounced cheque as proof for bad faith, thus leading to criminal liability.

Hanka Jahn
Meyer-Reumann & Partners,
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GCC

Trademarks Registration in the GCC - Data and Facts

Guiding Principle

Awareness of the importance to protect IP rights is continuously growing all over the globe due to the enormous losses sustained by the industrial countries because of the spread of counterfeit trademarks and products. Protecting IP rights against imitators is of utmost importance, in particular in areas like the Gulf, where faked products are constantly penetrating the market. The fight against faked products starts with the registration of the IP rights.

A. Trademarks in the UAE

According to the data published by the UAE-Ministry of Economy¹, the number of new trademarks for one or more categories being registered in 2010 in the UAE amounts to 14.000. This is the same number of trademarks, which have been registered in 2009, the year the economy was most affected by the financial worldwide crisis. In

¹ For more information please see the following link of the UAE-Ministry of Economy: www.economy.gov.ae

comparison, in 2008 about 19.000 trademarks have been registered in the UAE.

According to the director of the Trademark Department at the UAE-Ministry of Economy the highest number of trademark registrations was in 2008. This reflects the economic growth of the UAE and its position as a logistic centre and trading hub of the Middle East. The economical environment for attracting the foreign investments and the trademarks again reflects the wide diversity of the nationalities of the owner of these trademarks companies.

It is our understanding that in consideration of the reviving economy the number of new TM-registrations 2011 and 2012 will be beyond those of 2008.

B. Trademarks in the GCC

Statistics show that in 2010, the number of new applications for registration of trademarks in GCC amounted to 49.000. Saudi Arabia ranks first with about 20.000 applications followed by the UAE with 14.000. As already in 2009, the UAE was in the second place after Saudi Arabia.²

It is our understanding that 2011 and 2012 will show an increase and that the positions of Saudi Arabia and UAE will not change.

C. Additional Registration with Dubai Customs

The risk of infringement of trademarks corresponds to the increase of the

² For more information please see the following link:
www.gulfbase.com/ar/news/140660

number of new companies starting business in the GCC. Hence, the violation of intellectual property rights affects its owner as well as the macroeconomic of the states, especially in the Gulf region, which is one of the areas that depend heavily on trade for which Dubai, UAE is the most prominent hub in the Gulf. Dubai does not tolerate infringement and a number of Dubai authorities are ready to take action. A preventive action is offered by Dubai Customs.

Dubai Customs provide the possibility to protect your trademarks more efficiently in the UAE (and beyond) by registering your trademark in additional to the TM registration with the TM-Department of the Ministry of Economy.

The fees of the Dubai Customs Authority³ are very reasonable. If you have products, which are shipped to or transhipped via Dubai into the Gulf this is an opportunity to maximize the protection of your TM, which should be taken right after the registration with the Ministry of Economy.

The Dubai Customs offers trademark owners to register their UAE-registered trademarks in its Register of its Intellectual Property Right Department. Dubai Customs will register your trademark in its own database and compare it with infringing products discovered during random inspections or upon your complaint during or prior to the import into Dubai. By registering your trademark and its details, and by providing the contact details of the TM-

³ For more information please see the following link of the Dubai Customs:
www.dxbcustoms.gov.ae

owner, Dubai Customs are able to detect trademarks which resemble your trademark but which are or may be counterfeits and inform the TM owner. Subsequently, Dubai Customs can and will intervene at the point of entry of suspicious goods and inform you as the registered owner before allowing the goods to enter the country or to be transhipped.

D. The M&P IP-Portal for Registration and Actions against Infringements of TM's and Patent's

Eventually, we would like to draw your attention to the M&P IP-Portal (<http://ip-portal.meyer-reumann.com>), which provides for IP-owner a (free) IP-Guide and the opportunity to prepare themselves well in advance to protect their intellectual property rights. This IP-Portal is a platform for the clients to register and to professionally take preventive measurements to protect intellectual property against piracy and infringements. The preventive preparations are free of charge until infringement cases are coming up and (prompt) actions are initiated to be taken.

E. Sesam's TM and Patent Infringement Services

Sesam Business Consultants (a company closely linked to M&P) is ready to help! Sesam has over twelve years experience in the GCC region and has been working with international clients to develop the markets of the United Arab Emirates, Saudi Arabia, Qatar and Oman. Sesam's projects cover a variety of industries ranging from Green Building/Construction to healthcare and

the food & beverage industry to industrial manufacturing. Sesam is also ready for market surveys to fight infringements.

Sesam's TM infringement services include the following:

- Market survey and research of background information with regards to potential trademark violators in the UAE
- Collaborating with the M&P as IP lawyers for supporting legal actions
- Documenting and securing of physical evidence of infringements
- Pursuing, supervising and documenting the confiscation and other actions of enforcement.

The full scope of Sesam services may be found on Sesam website: www.sesam-uae.com

Tareq Jeroudeah
Meyer-Reumann & Partner, Dubai
Office

GCC

Patents Registration in the GCC - Data and Facts

Guiding Principle

Awareness of the importance to protect IP rights is continuously growing all over the globe due to the enormous losses sustained by the industrial countries because of the spread of counterfeit trademarks and products. Protecting IP rights against imitators is of utmost importance, in particular in areas like the Gulf, where faked products are constantly penetrating the market. The fight against faked products starts with the registration of the IP rights.

A. Patent Registration in the GCC

The World Intellectual Property Organization (WIPO) is annually publishing the number of patents filed every year through the Patent Cooperation Treaty (PCT). In 2008 Saudi Arabia was at the top of the Arab counties registering in total 61 patents. The United Arab Emirates was the second in the GCC with 22 patents, followed by Kuwait with 3 filed patents⁴.

According to the Patent Office of the GCC, the number of patents being filed in 2008 is as follows:

- About 22.547 new patents;

⁴ The data here be published on the website of WIPO, for more information please see the following link: www.wipo.int

- The number of granted patents was about 2.189 patents;
- The non-valid applications arrived to about 6.347 applications;
- The non-valid patents reached to about 644 patents.
- Conversely, the statistics showed that the number of patent applications, which were filed by that Office that year was about 2.316 applications;
- The number of granted patents that year was about 226 patents;
- The applications in progress are about 14.030 applications⁵.

Statistics show that patent applications filed in Saudi Arabia in 2010 are about 931 applications and the number of granted patents is about 262 patents. The rejected patent applications are about 393 applications, and lapsed patent applications amount to approximately 443 applications.

In 2011, statistics show that patent applications filed in Saudi Arabia are about 1.000 applications whereas the number of granted patents amounts to only 253 patents. Rejected patent applications came to 324 applications, lapsed patent applications to about 286 applications and withdrawn patent applications are about 7 applications⁶.

⁵ The data here be published on the website of the Patent Office of the GCC, for more information please see the following link: www.gccpo.org/

⁶ The data here be published on the following website:

B. The M&P IP-Portal for Registration and Actions against Infringements of TM's and Patent's

Patent registrations are done to create IP-rights and to be ready to fight for protections and damages if they are infringed. M&P has created the M&P IP-Portal (<http://ip-portal.meyer-reumann.com>), which provides to owners of IP-rights a (free) IP-Guide and gives clients the opportunity to upload well in advance the documentation required to fight infringements and to prepare themselves well in advance of the event of an infringement to protect their intellectual property rights. The M&P IP-Portal is a platform for the clients to register and to professionally take preventive measurements to protect their intellectual property against piracy and infringements. The preventive preparations on the M&P-IP-Portal are free of charge until infringement cases are coming up and (prompt) actions are required.

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The full scope of Sesam services may be found on Sesam website: www.sesam-uae.com.

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<http://www.kacst.edu.sa/ar/innovation/patents/pages/statistics.aspx>

Iran

The Product Liability in the Legal System of the Islamic Republic of Iran

Guiding Principle

These days, the necessity of protecting consumers' rights by approving some rules regulating the relationship between producers and consumers is felt. Product Liability is the body of law which solves this problem and provides compensation for physical injuries and property damage resulting from defective and unreasonably dangerous products, and from the failure of a manufacturer or seller to warn the consumer of product dangers. The issue of product liability had been forthcoming in the Iranian Civil Code ratified during 1927-31 and the Law on Protection of Consumer Rights of 2009.

A. Introduction

People these days are inundated with choices. The variety of options and choices in goods and services is vast to the extent that some products may have dangerous and complex combination, so their manufacturer and producers are required to use highly technical and professional skilled employees. Most consumers have no idea about the combination, quality and safety of products they consume. Apart from the price which is considered as a determining criterion in selecting special goods or services, the promotion offered by producers of goods and provider of services plays a significant key role in this respect. Actually, consumers make

their decision according to their need and their trust on producers' marketing and promotion.

The issue is if supplier of goods and provider of services misuse consumers' negligence and trust and provide them with defective goods or inappropriate services who is responsible and liable for compensating probable loss. Therefore, the necessity of protecting consumers' rights by approving some rules regulating the relationship between producers and consumers is felt. Product liability is the body of law which solves this problem and provides compensation for physical injuries and property damage resulting from defective and unreasonably dangerous products, and from the failure of a manufacturer or seller to warn the consumer of product dangers. In particular, product liability refers to the liability of any or all parties along the chain of distributor of any product for damage caused by that product. This includes the manufacturer of component parts (at the top of the chain), an assembling manufacturer, designer, formulator, constructor, rebuildler, fabricator, producer, compounder, processor, seller, the wholesaler, and the retail store owner (at the bottom of the chain).

B. Evolution of Product Liability Law

The issue of product liability had been forthcoming in the Iranian Civil Code (abbrev. IR-CC) ratified during 1927-31 by the Iranian Parliament. Some part of this code encompasses regulations on the liability of seller/provider of product and services towards consumers and provides for compensation where consumers' rights are violated. Although

the Iranian Civil Code is rich, it has many shortcomings and deficiencies especially in the area of product liability. Generally it does not contain appropriate solutions in response to our problems today in an industrial life. Hence, the need for a new Act was felt very strongly. Therefore, the Law on Protection of Consumer Rights (abbrev. IR-PCR) was enacted on 07.10.2009.

Furthermore, there are a number of laws which expressly or impliedly provide some regulation in respect of product liability, most of which are found in criminal set of laws imposing specific obligation on manufacturers, distributors and importers to give consumers warranty regarding quality and quantity of goods and services. These laws also adopt punitive measures against any disobedience or violation of laws as well. The following laws are some of the most important ones:

(1) The Executive By-Law on Registration and Attestation Industrial and Commercial Marks on Medicines, Food and Cosmetic Products dates 23.04.1949. The said regulation imposes some rules like labelling products including the following information:

- Warnings if the product is dangerous or bears any risk;
- Type, nature, components / ingredients of product;
- Date of production or packaging;
- Expiration date;
- Country of origin;
- Method of use.

- (2) The Law on Establishing Consumer Protection Fund dated 1974; The Fund aims to i) protect consumers against inflation and changes in cost of production in local and international markets; and ii) provide reasonable protection for manufacturers.
- (3) Repressive Law on Penalizing Monopoly dated 12.04.1988. The said law promotes fair competition and prevents monopoly behaviours and protects consumers against distributing unsafe, fraudulent and non-original products. According to this law, misleading or deceptive conducts by any person in advertising products is prohibited. Prices must be displayed in a noticeable manner. All sellers and service providers must provide the consumers with the price list of their products. Supplier must provide an invoice for products.

C. Theories, Approaches and Legislative Documents

I. Definition

Products containing inherent defects that cause harm to a consumer of the product, or someone to whom the product was loaned, given, etc., are subject to products liability suits.

A product in IR-CC and IR-PCR refers to any movable property, can be bought and sold, used separately or installed in other movable or immovable properties. The product liability refers to both goods and services, but neither Civil Code nor IR-PCR provides definition for "Services". In economics and marketing, a service is the non-material equivalent of a good. It has been defined as an

economic activity that does not result in ownership; generally it can be offered to a market and might satisfy a want or a need.

II. Types of Defects

In general, there are three types of product defects that incur liability in manufacturers and suppliers: design defects, manufacturing defects, and defects in marketing (Duty to Warn). Many legal systems clearly set specific provisions in respect of these three types of defect. While the Iranian legal system in Art. 426 IR-CC provides the determination of a defect shall take place in accordance with common usage and custom, and therefore may vary with time and place. IR-PCR defines defect as an excess, shortcoming or transformation which reduces the economical value of goods or a service.

III. The Strict or Tortuous Liability of Manufacturer and Supplier of Products

Generally, civil liability is grouped into strict liability for breach of express or implied warranty and strict liability in tort.

1. Strict Liability for Breach of Express or Implied Warranty (Contractual Liability)

Strict liability for breach of express or implied warranty comes from a contract and is arisen in case of failure to perform a contract. Upon concluding a contract, the contracting parties have an obligation towards each other to meet their contractual commitments. The seller is obliged to provide the purchaser with goods or services and any failure will result to a breach of contract. Art.

219 IR-CC provides that contracts made according to the law are binding on the parties or their substitutes, unless they have been cancelled by mutual agreement or for some legal reason

Contractual liability is objective, breach of contract imposes liability. The obligor will not be discharged of his obligation, even it is proved that he did his commitment with due care and in conscientious manner except in force majeure cases. Moreover, there is no need that the promisee proves the failure of obligor to be in breach of contract although the following factors should exists:

- A valid contract which was concluded between a person sustaining a loss and a person causes loss; and
- The loss should be resulted of breaching the provisions of such contract.

If a person purchased factory machinery for producing cloth, then an accident occurred and the purchaser sustained heavy damages as a result of manufacturing defect, the manufacturer has to compensate for the damages, since both parties concluded a purchase contract which include express or implied warranty. In case of including no express warranty in the contract, according to Art. 220 IR-CC, the contract itself gives such guarantee to purchaser, since the purchaser paid a purchase price in consideration of perfect and safe machinery. Meaning, in case of sustaining any damage, the purchaser has the right to seek for compensation. Besides that, the

purchaser of machinery has two other options according to IR-CC. Art. 422 IR-CC provides that if it appears, after the transaction, that the thing sold was defective, the purchaser has the option either to accept the defective thing together with compensation for its defect, or to cancel the transaction. Due to Art. 424 IR-CC, the purchaser still has such options, even if the defect was evident at the time of transaction, but the purchaser did not realize that fact. Thus, the purchaser could refund the machinery or could exercise his option of receiving compensation because of the existing defect in the sold product.

According to Art. 2 IR-PCR, if the subject of transaction includes *Universitas facti* goods (fungibles or unascertained goods), and in case of observing a deficiency or disconformities of goods with distinct situations, the customer is entitled of claiming an intact exchange and the seller must ensure that.

2. Strict Liability in Tort (Tortuous Liability)

Strict liability in tort is arisen in the instances of causing damage or injury by negligence. It comes when somebody illegally causes damages to another person, so law and public policy makes a person in default compensate for the loss. Such liability is the obligation towards public comparing with contractual liability which protects contracting parties. In general, tortuous liability, determined mainly by law, is imposed when neglect occurred and the burden of proof lies on a person sustaining a loss.

The doctrine of privity in contact law

provides that a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it. As per Art. 231 IR-CC, undertakings or contracts are only binding on the two parties concerned or their legal substitutes. This seems to make adequate sense, that only parties to contracts should be able to sue and to enforce their rights or claim damages as such. However, the doctrine has proven problematic due to its implications upon contracts made for the benefit of third parties who are unable to enforce the obligations of the contracting parties. If a third party gets a benefit under a contract, it does not have the right to go against the parties to the contract beyond its entitlement to a benefit. An example of this occurs when a manufacturer sells a product to a distributor and the distributor sells the product to a retailer. The retailer then sells the product to a consumer. There is no privity of contract between the manufacturer and the consumer.

This problem has gradually been solved in common law courts. In the Iranian legal system, in case of having no contractual relationship, the only alternative is seeking compensation based on the causation theory. Pursuant to Art. 331 IR-CC, anyone who causes some property to be destroyed must give back its equivalent or its value, and if he causes a defect or damage to it he will be held responsible for any depreciation in value. Art. 1 of Civil Liability Code of Iran of 1960 provides that any one who injures intentionally or due to his negligence, the life or health or property or freedom or prestige or commercial fame or any other right established for the individuals by virtue of law, as a

result of which another one sustains materially or spiritually losses, shall be liable to compensate the damages arising out of his action.

Nevertheless, still there is a practical problem in this respect. The burden of proof is on the consumer sustaining a loss. The consumer has to prove the manufacturer's negligence and dereliction of his duty in causing damages which is required having technical skills or expertise. Unfortunately most lawsuits filed based on causation theory before Iranian courts, are not successful because of the difficulty of proving the manufacturers' negligence.

Nevertheless, Art. 2 IR-PCR somehow solves this problem. Art. 2 provides that the manufacturers/distributors of goods and services, individually or severally, are responsible for distribution of safe goods and render perfect services in accordance with determined conditions and standards in laws and/or relevant concluded contract or common law. The manufacturers/distributors shall be liable to compensate all losses resulted from their defective goods or incomplete services.

Moreover, according to Art. 3 IR-PCR, manufacturers and service providers are required to give warranties for their goods and services. Such warranty must contain all necessary information concerning the kind, the quality, the quantity, the pre-consuming information, the production date and expiration date.

D. Conclusion

Product liability has been a dynamic issue in many legal systems, while Iranian legislation touched this issue in

the Civil Code in 1927 but left it silent for many years until 2009. The Law on Protection of Consumer Rights does not support consumers strongly and it crucially needs to be reviewed and amended.

One of the main reasons for adopting such a delaying and non-efficient tactics is that Iran has a newly established and vulnerable industry. Because of the significant increase in foreign import, the local manufacturers find it difficult to compete with foreign production. Therefore, it is government's legal and economic policy to provide appropriate means for promotion and protection local entrepreneur and investors in a way of industrialization. By considering an unfair supply and demand, manufacturers have been preferable to consumers.

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Meyer-Reumann & Partners,
Tehran Office

Egypt

Consequences of Changes of Egypt Government in the field of Legislation

Guiding Principle

Like other countries of the Arab Spring, the Egyptian revolution led the Islamist movements to the power. This had its clear impacts on legislations in the country. In this article, we present a quick review on the most important legislation enacted or still under the enacting process since the revolution.

A. Introduction

Two years after the fall of President Mubarak, Egypt has now a new Constitution if also controversial. The Constitution draft has been approved by a majority of 63.8 %. However, it is only 33 % of the 52 million Egyptians eligible who took part in the referendum. The Shura Council (the second Chamber of the Parliament), will adopt laws so long until a new Parliament is elected. With the new Constitution, also the way for parliamentary elections is clear. This should take place within the next two months.⁷

The Constitution gives the Islamic forces more influence in the future and therefore is criticized by Liberals, Leftists and Christians. The opposition fears a stricter interpretation of Islamic law (the Sharia), which remains the main

⁷ <http://www.spiegel.de/politik/ausland/aegypter-nehmen-islamistisch-gepraegte-verfassung-mit-64-prozent-an-a-874656.html>

source of legislation. They see themselves not represented in the Constitution. Therefore there had been repeatedly violent protests and sometimes deadly riots over the past few weeks.⁸

The German foreign minister Mr. Guido Westerwelle called President Mursi again after the referendum to a dialogue with the opposition. President Mursi must "go on all social forces and find the political compromises that can incorporate all Egyptians and take on this path, Mr. Westerwelle declared on 26th December 2012". The High Representative for foreign and security policy, Catherine Ashton, urged all forces in Egypt to dialog as well.⁹

B. Economic Situation and Egyptian Government's Policy

The new Government is facing the challenge to lead the necessary structural change in the right way. The future political decisions will be decisive for the economic development of the country. It remains - with international support - the prospect of a positive economic perspective of the biggest and important country in the Arab World with more than 90 million inhabitants.¹⁰

⁸ <http://m.faz.net/aktuell/politik/arabische-welt/parlamentswahl-in-zwei-monaten-aegypten-hat-eine-neue-verfassung-12005994.html>

⁹ http://www.auswaertiges-amt.de/DE/Aussenpolitik/Laender/Aktuelle_Artikel/Aegypten/121203-AegyptenVerfassung.html

¹⁰ http://www.auswaertiges-amt.de/sid_951C223A2A6030AFF65A1919C0CB59B5/DE/Aussenpolitik/Laender/Laenderinfos/Aegypten/Wirtschaft_node.html#doc363014bodyText7

The Egyptian economy suffers now since two years as a result of the political crisis that started with the fall of Husni Mubarak. Now the constantly burgeoning unrest is increasingly putting off the investors and tourists. The foreign exchange reserves of the country are therefore gradually running out.¹¹

In order to be able to absorb the mentioned effects, Egypt requires urgent financial support from abroad in line with economic reforms. However a 4.8 billion dollar heavy credit of the International Monetary Fund was delayed. Although it was already basically agreed in November¹², it didn't come to the final signing so far because of the fear of social protests.¹³

1. Government Shuffled

With Egypt's economy going steeply downhill, it is also the lack of political stability, which has deterrent effect on investors.¹⁴

That is why Egypt's President Mohammed Mursi is now serious (with a cabinet reshuffle) to fight the economic crisis and at the same time placate the anger of the population.¹⁵

¹¹ <http://www.zeit.de/politik/ausland/2013-01/mursi-ernennung-minister>

¹² http://www.manager-magazin.de/politik/artikel/0,2828,876001_00.html#ref=rss

¹³ <http://www.blick.ch/news/ausland/zehn-neue-kabinettsminister-in-aegypten-vereidigt-id2159287.html>

¹⁴ <http://www.fr-online.de/aegypten-syrien-revolution/aegypten-mursi-baut-regierung-um,7151782,21398476.html>

¹⁵ <http://www.n-tv.de/politik/Mursi-setzt-auf-Islamisten-article9898381.html>

Among other things, finance, interior and transport ministers have been replaced.¹⁶

2. Mediation Law Drafted

The Ministry of Justice is in the process of drafting a new law for mediation. The purpose of the law is to settle civil and commercial disputes with a value exceeding 100,000 EGP. The process of settling the dispute is supposed to start by choosing a mediator to settle the dispute amicably. In case such process was not successful, the dispute is raised to the Department of Judicial Mediation at the Elementary or Economic Court.¹⁷

3. Government Approved Islamic Bonds (Sukuk)

On 19.12.2013 the Egyptian Cabinet approved in its meeting in principle a draft law on using Islamic bonds. Sukuk is the Arabic name for financial certificates, but commonly refers to the Islamic equivalent of bonds. Since fixed income, interest bearing bonds are not permissible in Islam, Sukuk securities are structured to comply with the Islamic law and its investment principles, which prohibits the charging, or paying of interest. Financial assets that comply with the Islamic law can be classified in accordance with their tradability and non-tradability in the secondary markets.¹⁸

The proposed law regulates provisions and measures of issuing such kind of bonds (finance, rental and investment

¹⁶ <http://www.sueddeutsche.de/politik/muslimbrueder-in-aegypten-mursi-tauscht-zehn-minister-aus>

¹⁷ Al-Ahram Newspaper dated 17.01.2013.

¹⁸ <http://en.wikipedia.org/wiki/Sukuk>

bonds) and organizes the authority to be in charge of issuing and managing these bonds, and registering them in the stock exchange. The law Draft suggests the establishment of a fund called Investment Risks Fund which is financed by the owners of these bonds.¹⁹

After weeks of discussion and preparation of a new Sukuk, or Islamic Bonds Law, the Islamic Supreme Scholars Association of Al-Azhar has refused the draft law on Sukuk.

The decision was later supported by the Shura Council's Economic Committee, which has also refused the law Draft because its not conform to the Sharia (Islamic law).²⁰ In addition to the considerations relating to sovereignty and the foreign ownership of Egyptian assets and the length of financing by up to 60 years.²¹

Meanwhile, there is another draft law prepared by the Egyptian Financial Supervisory Authority that regulates Sukuk offered by private companies and banks. The idea of two separate Sukuk laws proposed by the government was rejected by the Nour Party and the Freedom & Justice Party.

Several Egyptian parties have voiced their reservations about the law Draft to be considered. However, it has been declared by representatives of these parties that the government ignored all

¹⁹ <http://www.global-islamic-finance.com/2012/12/egypt-government-approved-islamic-bonds.html>

²⁰ www.almasryalyoum.com/node/1356271.

²¹ <http://www.aawsat.com/details.asp?section=6&article=712052&issueno=12459#.UQaKJx0qaRY>

their remarks and presented the draft without any amendments. The negotiations are still ongoing until now.²²

4. Land Ownership Law of Sinai

In September 2012, Egyptian Prime Minister Hisham Kandil issued Decree No. 959/2012, containing executive regulations on the comprehensive development of the Sinai Peninsula. Article 8 of the Decree stipulates that any Egyptian with dual nationality must, within six months of implementation of the executive regulations, sell his property, whether land or buildings, in Sinai to Egyptians who hold only Egyptian nationality and whose parents are both Egyptian.

Moreover, the law prohibits Egyptian investors married to non-Egyptian spouses from owning properties in Sinai as well.²³

The article adds: "If the six months pass and the property was not sold, the ownership will revolve to the state in return for payment of equivalent price to the owner. The price will be decided by a committee of experts formed by a decision from the Minister of Justice."

Some of the local investors have pointed out that such law would certainly hinder investment in Sinai, because it would discourage Egyptians with dual nationality from investing in the Peninsula.

Some of the experts consider that the law would hamper investment in Sinai

²² <http://weekly.ahram.org.eg/News/920/18/Sukuk-conundrum.aspx>

²³ <http://www.boswtol.com/politics/reports/13/january/3/75645>

and add to the already tense situation in the Peninsula.

However, foreigners and Egyptians, according to the same law, can own entities without owning the land on which they are built through submitting a petition to the National Authority for the Development of Sinai.

The authority could then accept or reject the petition within 90 days of its submission.

Experts claim that the law comes with the purpose of controlling land ownership in Sinai for fear it could be sold to foreigners. Legal tricks are practiced in Sinai to sell foreigners the land in the Peninsula with legal and registered contracts.

Some of the experts pointed out that the law could be judged unconstitutional because it contradicts with the notion of citizenship on the grounds that it discriminates between Egyptians. Furthermore, this law could mean confiscating lands without a court ruling, which is unconstitutional.

For security reasons, land ownership in Sinai is firmly controlled, even for Egyptians. Egyptian investors with a non-Egyptian parent, for example, cannot own land but can obtain concession contracts in the Peninsula.

Until recently, foreigners were banned from owning property in Sinai. However, the Egyptian government agreed last September to allow foreigners to invest in Sinai with a maximum stake of 45 % in any Sinai-based project, while Egyptian capital in any project should not be less than 55 %.

Foreigners can run or manage their ventures through concession contracts from the government.²⁴

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Oman

U.S.-Oman Free Trade Agreement

Guiding Principle

This Article deals with the recent developments in the implementation of the U.S.-Oman Free Trade Agreement (FTA). The FTA is a binding international agreement between the Sultanate of Oman and the Government of the United States of America that is intended to improve economic relations and strengthen the overall relationships between the two countries.

A. Introduction

I. Overview and Recent Developments

The U.S.-Oman Free Trade Agreement is a trade pact between Oman and the United States, signed by two countries on January 19, 2006 and came into force on January 1, 2009, as a part of the broader plan to create a US - Middle East Free Trade Area (MEFTA).

The U.S.-Oman FTA builds on the 14 existing American Free Trade

²⁴ <http://www.el-balad.com/374771>

Agreements in force with 20 different countries (U.S. FTA Partner Countries: Australia; Bahrain; Chile; Colombia; DR-CAFTA: Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, & Nicaragua; Israel; Jordan; Korea; Morocco; NAFTA: Canada & Mexico; Oman; Panama; Peru; and Singapore). Oman is the fifth Middle Eastern country to have negotiated an FTA with the United States; the U.S. has an FTA with only one other GCC country (Bahrain), although more are expected in upcoming years. Currently, Oman is also a part of the GCC-South Korea Free Trade Agreement (FTA). The U.S. Free Trade Agreement with the Sultanate of Oman promotes economic reform and provides a framework for integration of the Omani economy with the United States. Implementation of the obligations contained in the comprehensive agreement will generate export opportunities for U.S. goods and services providers, solidify Oman's trade and investment liberalization, and strengthen intellectual property rights protection and enforcement.

The first meeting of the FTA Joint Committee (JC), chaired jointly by the Office of the U.S. Trade Representative and Oman's Ministry of Commerce and Industry, took place in February 2010. Officials of the two governments discussed a broad range of trade issues, including implementation of Oman's obligations under the labour and environment chapters and cooperative efforts in those areas.

During the last months, the two governments scheduled discussions between their respective experts on the ongoing implementation of the FTA.

The U.S. Embassy in Muscat and the Omani Ministry of Commerce & Industry held successful talks and confirmed to extend 'local' Omani treatment to American companies as stipulated in the FTA, together with their commitment to monitor application of the FTA vigorously to ensure that such benefits are granted only to bona fide American companies and not to third-party nationals with no substantial business activities in the United States.

B. The United States-Oman FTA Summary

I. General Provisions

As of January 1st, 2009, the U.S.-Oman Free Trade Agreement is in effect and will mean increased business between the two countries, mainly by allowing 100% of bilateral products traded between the U.S. and Oman tax free. In addition, Oman and the United States of America will provide each other immediate duty-free access on virtually all products in their tariff schedules and will phase out tariffs on the remaining handful of products within ten years.

All consumer and industrial products traded between the U.S. and Oman will now be tax free. As a result, residents in Oman can expect lower prices on U.S. consumer and industrial products. Similarly, Omani companies seeking to do businesses with the U.S. will now have open access to the world's largest economy.

U.S. companies seeking to do businesses in Oman will also enjoy an unprecedented level of openness and access to the Omani services market. The FTA includes benefits for service providers across a range of fields,

including banking, insurance, securities, and asset management, among others. Additional provisions provide for state of the art protection of intellectual property, as well as protections for the environment and domestic labour laws.

The Agreement covers also all agricultural products. Oman will provide immediate duty-free access for current U.S. agricultural exports in 87% of agricultural tariff lines. The United States will provide immediate duty-free access for 100% of Oman's current exports of agricultural products in the United States. Both Oman and the United States will phase out tariffs on the remaining products in ten years.

The FTA provides fully reciprocal market access for U.S. textile and apparel products. The United States and Oman will eliminate tariffs on the same schedule on a product-by-product basis. For the majority of products, tariffs will be eliminated either immediately or in five years. The Agreement requires textile and apparel products to contain either U.S. or Omani yarn or fabric in order to qualify for duty-free treatment. However, in order to allow U.S. and Omani producers to develop and expand business contacts, the Agreement also provides, on a temporary basis, duty-free treatment for limited quantities of textile and apparel products that do not meet this requirement.

II. Recapitulation

Although the implementation of the U.S.-Oman Free Trade Agreement is still ongoing, the FTA has already proven to be of a significant assistance for American companies establishing business relations with the Sultanate of

Oman. The FTA introduces 100% ownership of an Omani limited liability company (LLC) and lower minimum share capital requirements for American companies.

The FTA establishes a secure, predictable legal framework for U.S. investors in Oman. Foreign direct investment can contribute significantly to the economic development and stability of this region. Oman actively seeks private foreign investors, especially in the industrial, information technology, tourism, and higher education fields. Investors transferring technology, providing employment, and training for Omanis are particularly welcome. The comprehensive Agreement not only eliminates tariffs, but also reduces barriers for services, protects leading-edge intellectual property, keeps pace with new technologies, ensures regulatory transparency, and serves as a model for all future agreements.

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